

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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| In the matter of the amendment) | NOTICE OF PUBLIC HEARING |
| of ARM 17.8.1201 pertaining to) | ON PROPOSED AMENDMENT |
| the definition of major source) | |
| in the air quality operating) | (AIR QUALITY) |
| permit rules) | |

TO: All Concerned Persons

1. On May 30, 2002, at 1:30 p.m. the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., May 20, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

3. The proposed amendment provides as follows, stricken matter interlined, deleted matter underlined:

17.8.1201 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) through (23)(b)(xxvi) remain the same.

(xxvii) ~~all other stationary source categories regulated by a standard promulgated under sections 7411 or 7412 of the FCAA, but only with respect to those air pollutants that have been regulated for that category~~ any other stationary source category, which as of August 7, 1980, is being regulated under section 111 or 112 of the FCAA.

(c) through (33) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: On November 27, 2001, at 66 Federal Register 59161, the Environmental Protection Agency (EPA) amended the definition of "major source" contained in 40 CFR 70.2, which EPA uses to determine major source status under the Title V air quality operating permit program. The proposed amendment to ARM 17.8.1201(23) would conform the definition of "major source" in the state's Title V rules to the revised federal definition.

EPA's action deleted the requirement that states include fugitive emissions in determining major source status for sources in categories subject to standards under Section 111

or 112 of the federal Clean Air Act (FCAA) promulgated after August 7, 1980. Section 111 provides standards of performance for new stationary sources, and Section 112 provides for promulgation of emission standards for hazardous air pollutants.

EPA made this amendment in response to a petition by the National Mining Association challenging the previous requirement that fugitive emissions be counted for all sources in Section 111 or 112 categories, regardless of when those standards were promulgated. The basis for the challenge was that Section 302(j) of the FCAA requires EPA to conduct rulemaking to determine sources of fugitive emissions that must be included in determining major source status for sources subject to Section 111 or 112 standards promulgated after August 7, 1980, and EPA has not done that. The EPA regulation required inclusion of fugitive emissions for all sources subject to a standard under Section 111 or 112, regardless of when the standard was promulgated. The EPA amendment added the August 7, 1980, date to the regulation, so that fugitive emissions must be included in determining major source status only if the Section 111 or 112 standard applicable to the source was promulgated as of August 7, 1980.

EPA is not requiring states to make this amendment; EPA is allowing states to have more stringent rules requiring inclusion of fugitive emissions in determining major source status for sources subject to Section 111 or 112 standards, regardless of the date those standards were promulgated. However, Section 75-2-217(1), MCA, requires that the state Title V rules be consistent with the federal Clean Air Act and implementing regulations, and Section 75-2-217(2), MCA, states that the Montana Title V program applies to all sources of air pollutants subject to the federal Title V statutes. Therefore, it's necessary for the Board to conform its definition of "major source" to the comparable federal regulations.

The EPA amendments to the "major source" definition also deleted the phrase "but only with respect to those air pollutants that have been regulated for that category." This amendment was intended to conform the definitions of 40 CFR Part 70 to the corresponding provisions of EPA's New Source Review (NSR) regulations. EPA is requiring states to delete this phrase from their Title V program definition of "major source" to avoid inconsistencies under which a facility might be considered major under NSR regulations but not under Title V. If this occurred in a Title V permit application, a facility could avoid reporting information concerning emissions for which it is major under Title V but not major under the NSR regulations. In addition to the fact that the Clean Air Act of Montana requires that the state Title V rules be consistent with comparable federal regulations, if the state does not make this amendment, the state may be subject to federal sanctions.

4. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. June 7, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

BY: JOSEPH W. RUSSELL
JOSEPH W. RUSSELL, M.P.H.,
CHAIRPERSON

Reviewed by:

DAVID RUSOFF
David Rusoff, Rule Reviewer

Certified to the Secretary of State April 1, 2002.